

<u>CASE NO.</u>	<u>VOLUME</u>	<u>PAGE</u>
HALIFAX REGIONAL SCHOOL BOARD (Appellant)	NOVA SCOTIA UNION OF PUBLIC EMPLOYEES, LOCAL 2 - and -	 (Respondent)
C.A. No. 146089	Halifax, N.S.	CROMWELL, J.A.

Cite as: Halifax Regional School Board v. Nova Scotia Union of Public Employees, Local, 1998 NSCA 199

APPEAL HEARD: September 29, 1998

JUDGMENT DELIVERED: November 12, 1998

SUBJECT: **Employment - Labour Relations - Actions - Jurisdiction of Courts
Courts - Jurisdiction - Labour Relations**

SUMMARY: The parties were bound by a collective agreement. On the same day that it was signed, the employer wrote to the Union confirming that the wage increases provided for in the agreement would be paid to employees as a lump sum following the expiration of a legislated wage freeze, **The Public Sector Compensation (1994-97) Act**, S.N.S. 1994, c. 11. After the wage freeze expired, the Union asked for payment of this sum and the employer refused because it thought the payment would contravene the **Act**. The Union commenced an action in the Supreme Court of Nova Scotia claiming the lump sum due its members as set out in the letter or, alternatively, damages for negligent misrepresentation. The employer applied to a Justice of the Supreme Court of Nova Scotia in Chambers to strike out the Union's statement of claim on the ground that the Union's claims were within the exclusive jurisdiction of an arbitrator under the collective agreement. The Chambers judge dismissed the application and the employer sought leave to appeal.

ISSUES:

- (1) Did the "essential character" of the Union's complaint as alleged in its statement of claim arise under the collective agreement and, therefore, fall within the exclusive jurisdiction of an arbitrator appointed under that agreement according to the principles set out by the Supreme Court of Canada in **Weber v. Ontario Hydro**, [1995] 2 S.C.R. 929 and **New Brunswick v. O'Leary**, [1995] 2 S.C.R. 967?
- (2) In the alternative, did the letter constitute a separate contract relating to salaries outside of the collective agreement which

would be unenforcible under the principles enunciated by the Supreme Court of Canada in **McGavin Toastmasters Ltd. v. Ainscough**, [1976] 1 S.C.R. 718?

- (3) Was the issue properly determinable pursuant to **Rule** 14.25 and was certain affidavit evidence admissible?

RESULT: The appeal was allowed and the action stayed.

It was not necessary to resolve the broader issue of whether the dispute in its essential character arose under the collective agreement and, therefore, was within the exclusive jurisdiction of an arbitrator. No grievance had been submitted and there had been no determination of arbitrability. Disputes arising under the collective agreement, including a dispute about whether a matter is arbitrable, are within the exclusive jurisdiction of an arbitrator. Having regard to the text of the collective agreement and the **Trade Union Act**, R.S.N.S. 1989, c. 475, the centrality of arbitration to the collective bargaining relationship, the nature of the inquiry which it is necessary to undertake to determine the arbitrability of a dispute and the concern that no one should be left with a right but no remedy absent compelling reasons, the question of whether the dispute between the parties concerns the interpretation, application or administration of the collective agreement, should be left, at least initially, to an arbitrator. The determination that the matter should not proceed in the courts until an arbitrator had dealt with the question of arbitrability was one that is properly made under **Rule** 14.25 because the determination depends only on the allegations in the statement of claim, the relevant provisions of the collective agreement and the **Trade Union Act**. The action should be stayed rather than dismissed.

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